

Human Rights Analysis

Guideline

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Overview

This tool provides a how-to guide for performing cross-cutting human rights analysis of development programmes and activities. It includes key screening questions for consideration during the activity cycle.

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About Human Rights

Background

Effective activities, programmes and policies require an evidence based context and problem analysis. Human rights analysis is a necessary first step to improve human rights outcomes and ensure that development activities do no harm. This Human Rights Analysis Guideline can be used for:

- Strategy and policy formulation and implementation
- Discussions with partner governments and agencies and other stakeholders
- Programme level strategic and results' frameworks
- Developing terms of reference for scoping, design, evaluations
- Contracting and briefing contractors
- Concept notes, activity design documents and appraisals
- Activity results frameworks, evaluations and reviews and progress reports, field visits
- Activity Monitoring Assessments (AMAs) and Activity Completion Assessments (ACAs)

Other resources available include:

- Development Manager: Cross Cutting Human Rights
- Principal Development Managers and DMs (sector)
- External human rights specialists, for example, the New Zealand Human Rights Commission.
- MFAT IDG Human Rights Community of Practice.

Human Rights Knowledge Notes on specific contexts (children, disability, and economic development) will be provided in future.

Why consider human rights?

Human rights play an important role in achieving sustainable development as their realisation contributes to social and political stability and capacity for innovation. Improving human rights is both an aim of development and a means of achieving it. The key human rights concept is that all human beings are born equal in dignity and rights.

Research evidence shows positive links between accountable government, equality and non-discrimination and sustainable economic development.¹ An analysis by the International Monetary Fund published in 2012 found that the duration of economic growth

¹ The World Development Report 2006, Equity and Development, World Bank. Also Rights and economic growth; inevitable conflict or common ground? March 2005 Andy McKay and Polly Vizard

periods is related to income distribution: More equal societies tend to sustain growth longer.²

Income inequality is not a breach of human rights but inequality of opportunity based on discrimination is.³ Political exclusion and inequality affecting religious or ethnic groups are associated with higher risks of conflict while inequality between richer and poorer households is closely associated with higher risks of violent crime.⁴

Rule of law is strengthened when all individuals are assigned rights in law which cannot be removed or infringed by elite or majority rule. Assisting citizens in developing countries to understand and claim their rights is a powerful tool for accountability. When citizens are aware of their rights they are better able to hold their governments to account for development policy and expenditure.

Accountability for human rights is formalised in the United Nations (UN) system and in treaty law and national law. See Annex 1 for background information and advice on how you can understand the human rights situation in countries relevant to your work.

The New Zealand Aid Programme is mandated by Cabinet to integrate the cross cutting issues of environment, gender and human rights into its policies, programmes and activities.

Human rights in development practice

The United Nations has identified six key human rights principles to apply in development policy and practice.⁵

Universality and Inalienability: Human rights are universal and cannot be taken away.

Indivisibility: All rights are inherent to the dignity of every person, whether they are civil, political, economic, social or cultural rights and they should not be ranked in importance.

Inter-dependence: The realization of one right often depends, wholly or in part, upon the realization of others.

Equality and Non-discrimination: Everyone is entitled to their rights without discrimination of any kind, such as race, sex, ethnicity, age, language, religion, opinion, and disability.

² Journal of Development Economics : What Makes Growth Sustained? A Berg, J Ostry and J Zettelmeyer, 2012 pages 149-166

³ For example, ICESCR article 2 (3) says that “higher education should be equally accessible to all, based on capacity...” and article 2 (a) says “primary education shall be compulsory”.

⁴ The World Development Report 2011, Conflict Security and Development, World Bank.

⁵ These principles are often quoted in UN documents and are drawn from the UN Statement of Common Understanding on Human Rights-based Approaches to Development Cooperation and Programming (the Common Understanding) 2003.

Participation and Inclusion: Everyone is entitled to meaningful participation in public affairs directly or through freely chosen representatives.

Accountability and Rule of Law: States and other duty-bearers are answerable for the observance of human rights.⁶

The last three principles in this list are particularly relevant for those managing development activities. Equality of opportunity is not possible when discrimination exists. We cannot understand the day-to-day nature of discrimination if some people are prevented from participating in the development of public policy and we do not learn how discrimination affects them as a result. Without reporting against human rights standards we cannot monitor progress.

A principle based approach in education, for example, involves identifying who is missing out in education (equality and non-discrimination), whose interests are not being represented when policy is determined (participation and inclusion) and how service providers and policy makers are held accountable to communities (accountability and rule of law). Results reporting would provide data on outputs and outcomes for the disadvantaged groups that the activity targets. Using data on overall educational attainment and investment in schools does not tell us whether the right to freedom from discrimination in education is being upheld.

Human rights implementation in development exists on a continuum of commitment. At the strong end, development agencies emphasize accountability through early identification of rights-holders and duty-bearers. Human rights treaties identify “everyone” as a rights-holder, including people who are vulnerable to social, economic and cultural exclusion and discrimination. Governments and their agents are the main duty-bearers as they have responsibilities to improve the human rights situation in their countries. This may include seeking international humanitarian and development assistance.

At the strong end, activities are designed to ensure that duty-bearers fulfill their obligations. Information and support is provided to rights-holders to obtain their rights. Specific human rights such as equality before the law and the right to education are referred to when development goals and methods are documented.

Programmes and activities with weak application of human rights principles miss opportunities to provide benefits to people marginalized by discrimination or perceived to be difficult to reach.

⁶ The UN system enables aggrieved rights-holders to highlight their issues internationally and in cases of gross abuse, rights-holders and their representatives may institute legal proceedings.

Using This Guideline

Human rights assessment is needed early and an initial analysis may need reconsideration when more is known. Consideration of human rights should start with the identification stage of the activity including the production of the concept note.

Before commencing the design of a new Activity you should consider the *Environmental and Social Impacts – Operational Policy* (ESI-OP). This requires all activities to be classified according to the level of social (and environmental) risk they pose. The *Environmental and Social Impacts Guideline* that is used in conjunction with the policy provides a checklist of social impacts known to be associated with development activities.⁷

The Human Rights Analysis Guideline provides screening questions to strengthen our analysis of the problem we aim to address. This analysis should

- identify any **risks and vulnerabilities** and negative, unintended consequences of the intervention, and mitigate against them
- identify **baseline data** that is needed to ensure human rights sensitive targets and indicators are included where appropriate
- identify who has **capacity to improve** human rights outcomes and the support they may need
- identify opportunities and describe interventions to **protect and promote human rights.**

Those appraising activities should be looking for evidence that these screening questions have been considered.

⁷ The ESI-OP aims to ensure that the aid programme does no harm in its development activities. It provides specific examples of possible harms and is available on Compass.

Key Screening Questions

Identifying discrimination

- Is there a culture of discrimination including exclusion from the benefits of development within the society/community that the activity takes place in? How is this reflected in policy, law, custom or behaviour? How does this relate to those affected by or involved in the activity?⁸
- Are some groups likely to be affected differently by the activity or programme (e.g. children, people with disabilities, migrants, ethnic or religious minorities)? If so, what are these affects?
- Do any practices associated with the activity exclude or discriminate against a particular group of people? For example, in education, are fees, uniforms, stationery and travel to school affordable for everyone?

Enabling participation

- Have the people affected by the activity or those who live within its locality been adequately informed about it?
- Can everybody affected by the activity participate in decision-making about the activity? If not, why not?
- Have any local communities or their representatives expressed opposition to the proposed activity? If yes, what is the basis of their objection? Do affected groups have access to a complaints/redress mechanism?
- Should the activity introduce additional processes for participation?

Accountability; identifying rights and assigning responsibilities

- Does the activity respect and promote the rights of affected people to improvement of living conditions, for example, favourable conditions of work, and access to adequate food and other conditions for health? (See Annex 2 for a listing of economic, social and cultural rights rights)
- Does the activity respect and promote civil and political rights, including equal protection before the law, and freedom of association? (See Annex 2 for a listing of civil and political rights rights)

⁸ For information about country contexts see

<http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>)

- Should the activity design identify particular human rights outputs and outcomes for the activity? For example, does the activity increase the capacity of rights-holders to gain their rights and the capacity of duty-bearers to fulfil these? Does the activity target groups that are subject to exclusion and discrimination?
- Does the activity design provide for collection of information⁹ to identify and monitor impacts on vulnerable groups? If the activity is designed to lead to specified human rights outputs and outcomes, how will these results be monitored and reported on?
- Does the activity identify opportunities for mitigation of any negative impacts? If yes, is there a mitigation plan, how was it developed and how will it be monitored?

Sustainability

- Will the activity increase partner government or civil society capacity to carry out effective social analysis and to foster policies and service delivery that responds to human rights issues?

⁹ Information can be both quantitative (measurement by quantity) or qualitative (describing impact by giving examples that show how and why there has been change)

Annex 1: The United Nations Human Rights Framework

Accountability for human rights is formalised in the United Nations (UN) system and in treaty law and national law. The 1948 Universal Declaration of Human Rights is the foundation of international human rights law.¹⁰ It inspired development of the legally binding international human rights treaties listed below. New Zealand is a party to these.

The International Convention on Civil and Political Rights, (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966. They provide a framework for the treaties that followed which focus on particular populations, for example, children, women and people with disabilities. ICCPR identifies rights that are directly related to democracy and the rule of law, for example, equality before the courts, and rights to freedom of expression, religion, and association with others. ICESCR refers to rights necessary for quality of life (and life itself in the case of food); including rights to an adequate standard of living, education and health and to take part in cultural life. These rights are to be “progressively realised” (see glossary for definition).

Most human rights treaties have a monitoring committee that receives reports from state parties to the treaty, and can receive complaints on rights abuses and initiate investigations where states agree to this mechanism. Every UN member state is subject to the Universal Period Review (UPR) process whereby they provide a report on the human rights situation in their country, as do NGOs (both international and national) and National Human Rights institutions. Other states make recommendations in a peer review process to the country being reviewed.

These accountability mechanisms ensure that human rights challenges within states are visible and subject to pressure to improve. You can use UPR reports to understand the human rights situation in countries relevant to your work.¹¹

List of core human rights treaties

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

This commits its members to the elimination of racial discrimination the promotion of understanding among all races, the outlawing of hate speech and criminalization of membership in racist organisations. The convention was adopted by the UN in 1965 and was therefore open for signature by UN member states.

¹⁰ See http://www.un.org/en/documents/udhr/hr_law.shtml for information about the Universal Declaration of Human Rights.

¹¹ UPR reports provide an interesting assessment of the state of human rights realisation in every country. To view these documents go to <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

Covenant on Civil and Political Rights (ICCPR)

ICCPR identifies rights related to democracy and the rule of law, for example, equality before the courts, and rights to freedom of expression, religion, and association with others. See Annex 2 for the treaty articles. It was adopted by the UN in 1966.

Covenant on Economic Social and Cultural Rights (ICESCR)

ICESCR refers to rights necessary for quality of life (and life itself in the case of food); including rights to an adequate standard of living, education and health and to take part in cultural life. See Annex 2 for the treaty articles. It was adopted by the UN in 1966.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Described as an international bill of rights for women it was adopted by the UN in 1979. States must take measures to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped roles for men and women. Gender equality must be enshrined into their domestic legislation.

Convention on Civil and Political Rights Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Convention requires states to take measures to prevent the torture or inhumane treatment of people deprived of their liberty within their borders, and forbids states to transport people to any country where there is reason to believe they will be tortured or treated inhumanly. It was adopted by the UN in 1984.

Convention on the Rights of the Child (UNCRC)

UNCRC sets out the rights of children and generally defines a child as any person under eighteen. It requires that states act in the best interests of the child. This approach requires that children are not treated as possessions and was adopted in 1989.

Convention on the Rights of Persons with Disabilities (CRPD)

Parties to this convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. The text was adopted by the United Nations in December 2006.

Important labour standards which relate to rights at work are embodied in eight "fundamental" International Labour Organisation conventions covering child labour, elimination of forced labour, rights to collective bargaining and discrimination in employment. New Zealand is a party to six of these.

See <http://www.ohchr.org/EN/Pages/WelcomePage.aspx> to view treaty texts.

Annex 2: Two key treaties

Summary of International Covenant on Economic, Social and Cultural Rights (1966)

1. All peoples have the right of **self-determination**, and to freely dispose of their natural wealth and resources.
2. These rights will be exercised without **discrimination** of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. **Men and women** are equally entitled to the enjoyment of all economic, social and cultural rights.
4. **These rights may only be limited** if they conflict with other rights in this covenant and only to promote the welfare of society in general
5. Nothing in this covenant implies for anyone the right to destroy any of the rights of freedoms herein.
6. Everyone has the **right to work** and to gain his living by work which he freely chooses or accepts.
7. Everyone has the right to **just conditions of work** including fair wages, equal pay for equal work, and rest and leisure.
8. Everyone has the right **to form trade unions**, and **the right to strike**.
9. Everyone has the right to **social security**, including social insurance.
10. **The family should be protected** as natural and fundamental group unit of society, with special protection for mothers during childbirth and children
11. Everyone has the right to an **adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions**. States Parties shall take measures to ensure and equitable distribution of world food supplies in relation to need.
12. Everyone has the right to the **highest attainable standard of physical and mental health**.
13. Everyone has the right to **education**, including compulsory primary education.
14. Each state undertakes to provide **compulsory, free primary education** within 2 years or to adopt a detailed plan of action.
15. Everyone has the right to **take part in cultural life** of his/her state.

Article 16–31 are mostly about the process of reporting to ECOSOC, and signing onto this treaty.

Summary of International Covenant on Civil & Political Rights (1966)

1. All peoples have the right of **self-determination**, and to freely dispose of their natural wealth and resources.

2. These rights will be exercised without **discrimination** of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth of other status.
3. **Men and women** are equally entitled to the enjoyment of all civil and political rights.
4. In times of **public emergency** a state may derogate from these rights except for articles 6, 7, 8, 11, 15, 16 and 18.
5. Nothing in this covenant implies for anyone the right to destroy any of the rights of freedoms herein.
6. Every human being has the inherent **right to life**. No one shall be arbitrarily deprived of his life.
7. No one shall be subjected to **torture or to cruel, inhuman or degrading treatment of punishment**.
8. No one shall be held in **slavery**; slavery and the forced labour shall be prohibited.
9. Everyone has the **right to liberty and security of person**, and freedom from arbitrary arrest of detention.
10. All persons **deprived of their liberty** shall be treated with humanity and with respect for their dignity.
11. No one shall be **imprisoned** for being unable to fulfil a contractual obligation.
12. Everyone has the right to liberty of **movement and freedom to choose his residence**.
13. A non-citizen may be **expelled from a state** only following a legal decision unless national security dictates otherwise.
14. All persons shall be **equal before the courts** and tribunals.
15. No one shall be guilty of any **criminal offence** which was not an offence at the time it was committed.
16. Everyone shall have the right to **recognition everywhere as a person before the law**.
17. Everyone has the right to freedom from **interference with his privacy, family, honour or reputation**.
18. Everyone shall have the right to **freedom of thought, conscience and religion**.
19. Everyone shall have the right to hold opinions without interference, and **freedom of expression**.
20. Any **propaganda for war** shall be prohibited by law.
21. The right of **peaceful assembly** shall be recognized.
22. Everyone has the right to **freedom of association with others**, including joining trade unions.
23. **The family** is the natural and fundamental group unit of society and is entitled to protection.
24. Every **child has the right to protection from the state**.
25. Every citizen has the right to **take part in the conduct of public affairs, directly or through chosen representatives, to vote freely in fair elections and to have equal access of public services**.

26. **All persons are equal before the law.**

27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, to **enjoy their own culture**, to profess and practise their own religion, or to use their own language.

28–47. Concerns the Human Rights Committee through which states have to submit reports on their adherence to the clauses of this treaty and 48-53 concern mechanisms for signing onto this treaty.

Annex 3: Glossary

ACCESSION: Acceptance of a TREATY by a state that did not participate in its negotiation or drafting.

CONVENTION: Binding agreement between states; used synonymously with TREATY and COVENANT. Conventions are stronger than DECLARATIONS in that they are legally binding for signatory states. The United Nations General Assembly creates international norms and standards when it adopts conventions. When national bodies ratify treaties they become part of their domestic legal obligations.

DECLARATION: Document represents agreed upon standards but which is not legally binding, e.g. Declaration on the Rights of Indigenous Peoples.

DUTY BEARERS AND RIGHTS HOLDERS: In a human rights-based approach (HRBA) to development, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-State actors with obligations (duty-bearers). It identifies rights-holders and corresponding duty-bearers and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations. It is often the state, which bears a duty to respect, protect and fulfil people's rights. The duty-bearer can also be a private entity such as a corporation, a family, or a local government.

EQUALITY: The notion that all human beings are entitled to the same human rights without distinction. Article 2 of the Universal Declaration of Human Rights (UDHR) embodies an equality principle. Equality does not necessarily mean treating people the same but rather taking steps to ensure equality of opportunity and access to justice.

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR): United Nations office charged with the promotion and protection of Human Rights worldwide. Based in Geneva, Switzerland it acts as a secretariat to the Human Rights Council. It has regional offices in the Pacific in Suva and Port Moresby.

HUMAN RIGHTS SYSTEM: Refers to the various groupings of human rights laws, courts, investigatory bodies and other organisations at the national, regional and international levels, which may provide enforcement mechanisms, and monitoring and reporting procedures.

INTERNATIONAL BILL OF RIGHTS: Expression used to describe the combination of the Universal Declaration of Human Rights, the

International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

PROGRESSIVE REALISATION: States who are a party to the covenant on economic, social and cultural rights, agree to take steps, individually or through international assistance and cooperation, to the maximum of their available resources, with a view to achieving *progressively* the full realisation of the right recognised in the Covenant. There is recognition that developing countries cannot achieve full realisation immediately. The covenant on civil and political rights has no such proviso - these rights come into effect immediately.

RATIFICATION: Process by which a legislature confirms a government's action in signing a treaty; formal procedure by which a state becomes bound to a TREATY.

RULE OF LAW: a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

SPECIAL PROCEDURES: The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of special procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As of 1 January 2013 there are 36 thematic and 12 country mandates. One example is a "special rapporteur" who is a person appointed to compile information on a subject usually for a temporary period and to report to the Human Rights Council.

STATE PARTIES: Governments that have ratified a TREATY.

TREATY-MONITORING BODY: Body (usually called a Committee or Commission) set up by a treaty to monitor how well STATE PARTIES follow their obligations under that treaty.